IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10148 of 1994

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAVITA B JOSHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10148 of 1994

MR MD RANA for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

MR BD DESAI for Respondent No. 2

Mr.H.M. Prachchhak, AGP for Respondent No. 3

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 10/12/2004

ORAL JUDGEMENT

1. This petition is filed by the widow of the employee, Babulal Gangaram Joshi, who was serving as a kotwala with the respondents, to seek family pension, as admissible to other such employees under the Government Resolutions.

1.1 According to the petitioner, directions are required to be issued to the respondents to grant her family pension as available to her on the basis of scheme of family pension framed by the respondent-Government from 1970 onwards and the arrears were also to be paid accordingly.

1.2 The second contention of the petitioner is that the Resolution dated 18th June 1990 granting benefits to the kotwalas who retired/died between 1st March 1979 and 28th February 1989, irrespective of the fact that such kotwalas had completed ten years of pensionable service or not, creates a discrimination amongst kotwalas who have retired prior to 1st March 1979 and thereafter. According to the petitioner, such divider-line framed by the aforesaid Government Resolution dated 18th June 1990 depriving the person, like the petitioner, is discriminatory, arbitrary, and violative of Article 14 of the Constitution of India, and the same is required to be quashed and set aside.

2. The case of the petitioner is that the deceased employee, Babulal Gangaram Joshi, was appointed as Pasaita Kotwala on 20th April 1962 and, thereafter, had continued to work as such. According to the petitioner, subsequently, he was also given duties as a peon at the polling station during the election of the District Panchayat, Junagadh. The petitioner has also produced the order dated 1st April 1968 (Annexure "C") on the record. The husband of the petitioner was, again, appointed purely on temporary basis for a fixed remuneration of Rs.27 per month. Thereafter, the husband of the petitioner, Babulal Gangaram Joshi, died on 12th January 1969. Accordingly, the petitioner has claimed that she is entitled to get the benefit of family pension under the scheme framed by the respondents, which was introduced from 1971. As per the said scheme, the widows of the employees of the State Government, who died or retired on or after 1st June 1971, to be given certain lumpsum financial assistance, which was, subsequently, enhanced to Rs.375 per month, after the judgment of this Court, and, therefore, according to the petitioner, she is entitled to the benefit of the said scheme.

2.1 In any case, according to the petitioner, she is

entitled to the benefit of the family pension scheme framed by the Government of Gujarat introduced in 1979 on par with the survivors of other government employees who had retired from the government job.

3. The respondents have filed affidavit-in-reply and resisted the claim of the petitioner on the ground that the Government Resolution dated 1st October 1980 is not applicable to the deceased husband of the petitioner on the ground that he had served as a kotwal on temporary basis and that too before 1st March 1979 and he was paid only a honorarium and, under no circumstances, he was eligible to receive pension as per the Government Resolution dated 1st October 1980. It is submitted that, as per the Government Resolution dated 1st October 1980 issued by the Finance Department of the State of Gujarat, the service of kotwalas prior to 1st March 1979 was not to be taken into account for the purpose of pension. According to the learned Assistant Government Pleader, the Government Resolution dated 18th June 1990, produced by the petitioner at Annexure "D", is clarificatory one, and, to some extent, it gives benefits to the kotwalas, who had worked from 1st March 1979 to 28th February 1989 and a concession was given to such employees who had not completed ten years of pensionable job. In the present case, the husband of the petitioner died on 12th January 1969 and he was not entitled to pension for the job which he had performed purely on temporary basis and with a monthly honorarium, since he was not regularly appointed government employee. The learned Assistant Government Pleader has, further, submitted that the husband of the petitioner had also not rendered any pensionable service and, therefore, the scheme of family pension framed by the State of Gujarat for its employees who expired or retired before 1st June 1979, was also not available to the petitioner and, therefore, the present writ petition deserves to be rejected and no interference is called for by this Court in exercise of powers under Article 226 of the Constitution of India.

3.1 Further, according to the learned Assistant Government Pleader, it cannot be said that the Government Resolution dated 18th June 1990 granting some benefits to the kotwalas who had retired in between and worked from 1st March 1979 to 28th February 1989, and the concession given to such employees, even though they had not completed ten years of pensionable service, can be made applicable to the case of the petitioner since the case of the aforesaid kotwalas cannot be equated with the case of the petitioner and, therefore, there is a rational in passing the aforesaid Resolution dated 18th June 1990 by

the Government, where the Authority concerned has considered the case of some kotwalas on various representations to grant the benefit of the pension scheme.

4. Having gone through the documents produced on record, and more particularly the relevant Government Resolutions, I do not find that the claim of the petitioner is justified and covered by the aforesaid Government Resolutions and the scheme of family pension introduced in the year 1979, in as much as, the service of the husband of the petitioner was purely on temporary basis and, as per the order produced by the petitioner at Annexure "C", dated 1st April 1969, the husband of the petitioner was working on a consolidated payment of Rs.27 per month towards honorarium. The earlier assignment given to the petitioner as a peon at the polling station pursuant to the election of the District Panchayat, Junagadh, was also for a limited period and no evidence is produced on record to show that the husband of the petitioner was in the regular establishment of the respondents.

5. Even the Government Resolution dated 1st October 1980 and subsequent Government Resolution dated 18th June 1990 are also not applicable to the present case, in as much as, the said resolutions clearly mention about the pensionable service rendered by the Kotwalas retired after 1st March 1979 and the concession was given to those Kotwalas who have not completed minimum ten years of pensionable service as specified in the earlier Resolution of 1980.

5.1 Therefore, certain concession by the Government to the kotwalas who have worked in between 1st March 1979 and 28th February 1989, even though they have not completed ten years of pensionable service, appears to be reasonable and just and it cannot be said that such decision of the Government is, in any manner, discriminatory or arbitrary or violative of Article 14 of the Constitution of India. In the present case, no cogent material is produced on record of the petition by the petitioner to establish that the husband of the petitioner was an employee of the respondent-Authority in the regular establishment and had completed pensionable service. No evidence is found from the record of the petition that the husband of the petitioner had completed even seven years of service, as claimed by the petitioner. Accordingly, no case is made out, by which, it can be concluded that the husband of the petitioner was an employee of the government. On the contrary, the

relevant documents produced by the petitioner herself suggest that the assignment given to the petitioner was, purely, temporary, for which, only a honorarium was paid. The order with regard to assignment of duties during the District Panchayat election at the polling station, is also temporary, which cannot establish that the petitioner was in government service on regular basis.

5.2 Even no representation was made to the concerned Authorities to establish the credentials for claiming family pension by the petitioner and, in the absence of relevant documentary evidence, no direction can be given to the respondents, as claimed by the petitioner.

6. The husband of the petitioner died in the year 1969, and the petitioner had lodged her claim of family pension in the year 1994, i.e. after 25 years from the death of her husband. Being a belated claim, even on the ground of delay and laches also, the case of the petitioner does not warrant any interference by this Court in exercise of its powers under Article 226 of the Constitution of India.

7. As a result of foregoing discussion, the petition fails and is rejected. Rule is discharged.

(Anant S. Dave, J.)
(swamy)